

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WASHINGTON STATE PATROL,)
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 79-22
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a Notice of Violation and \$50 civil penalty; having come on regularly before the Pollution Control Hearings Board by submission of briefs; and appellant, Washington State Patrol, being represented by Kevin M. Ryan, Assistant Attorney General, and respondent, Southwest Air Pollution Control Authority, being represented by its attorney, James D. Ladley; and the Board having considered the exhibits, briefs, records and files herein and having reviewed the Proposed Findings of Fact, Conclusions of Law and Order of the presiding officer, and the Presiding Officer having served said Proposed

Findings of Fact, Conclusions of Law and Order upon all parties herein by certified mail, return receipt requested, and twenty days having elapsed from said service; and

The Board having received no exceptions to said Proposed Findings of Fact, Conclusions of Law and Order, and the Board being fully advised in the premises, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed Findings of Fact, Conclusions of Law and Order dated the 27th day of August, 1979, and incorporated by reference herein and attached hereto as Exhibit A, is adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

DATED this October 2 day of October, 1979.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member


CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
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AND ORDER

CERTIFICATION OF MAILING

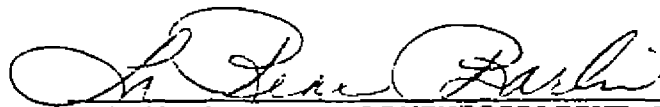
I, LaRene Barlin, certify that I mailed, postage prepaid, copies of the foregoing document on the 2^d day of October, 1979, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Kevin M. Ryan
Assistant Attorney General
Temple of Justice
Olympia, Washington 9504

Mr. James D. Ladley
Attorney at Law
P. O. Box 938
Vancouver, Washington 98666

Southwest Air Pollution Control Authority
7601-H Northeast Hazel Dell Avenue
Vancouver, Washington 98665

Washington State Patrol
605 E. Evergreen Blvd.
Vancouver, Washington 98666



LARENE BARLIN, ADMINISTRATIVE ASSISTANT
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
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Respondent.)
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PCHB No. 79-22

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, an appeal of a Notice of Violation and \$50 civil penalty issued on January 25, 1979, came before the Pollution Control Hearings Board by submission of briefs as agreed by the parties' representatives. Appellant was represented by Kevin M. Ryan, Assistant Attorney General; respondent was represented by its attorney, James D. Ladley.

Having considered the briefs, contentions and arguments of the parties, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I

During January of 1979, a large accumulation of broken tree limbs resulted from weather conditions in Clark and Cowlitz counties. In an attempt to assist in the disposal of the debris, respondent allowed burning by private homeowners of broken tree limbs and other natural vegetation resulting from ice damage. On January 19, 1979, respondent issued a press release which clearly stated that the ban on open burning of natural vegetation by private homeowners was being lifted. The January 21, 1979 edition of the Vancouver Columbian stated:

"The Southwest Air Pollution Control Authority is lifting the ban on open burning so broken tree limbs and other natural debris can be disposed of."

The article did not mention that the lifting of the ban applied only to private homeowners, although the newspaper article indicated the lifting of the ban was in order to help "folks" who needed to get rid of debris.

II

The supervisor at the appellant's Vancouver office on Evergreen Boulevard relied upon the newspaper article as well as radio broadcasts for information concerning the relaxation of the ban. Apparently believing the special lifting of the ban applied to everyone who wished to burn vegetation debris, an employee of the appellant ignited a small fire on January 24, 1979.

PROPOSED FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

1 III

2 Appellant did not apply, nor obtain, any permit from the
3 respondent, Southwest Air Pollution Control Authority. Appellant's
4 employee did, however, confer with another employee who is also a
5 volunteer lieutenant in the Salmon Creek Fire District; it was
6 decided to burn some vegetation debris according to the bulletin
7 promulgated by the news media.

8 IV

9 At 1:36 p.m. on January 24, 1979, respondent's representative
10 observed appellant's fire, being conducted by persons other than a
11 private homeowner. Field Notice of Violation Number CS 1294 was
12 issued to the appellant at that time. The fire was extinguished by
13 appellant's employee immediately. On January 25, 1979 a Notice of
14 Violation of Article IV, Section 4.01 of respondent's Regulation I was
15 issued and a Civil Penalty of \$50 was assessed.

16 V

17 Appellant has not previously been cited for violation of the
18 open burning regulations of the Southwest Air Pollution Control
19 Authority.

20 VI

21 Any Conclusion of Law hereinafter stated which should be
22 deemed a Finding of Fact is hereby adopted as such.

23 From these Findings the Pollution Control Hearings Board
24 comes to these

25 CONCLUSIONS OF LAW

26 I

27 Article IV of respondent's Regulation I, requires that no

person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open fire within respondent's jurisdiction, except as permitted in the regulation.

II

In January of 1979, respondent issued a press release to the media in its geographical area, indicating that private homeowners were to be allowed to burn natural vegetation which had fallen and accumulated in the severe winter storms. However, the limitation to private homeowners was not expressed by the media; consequently, those relying upon the media for information were unaware of the limitation.

III

Appellant caused a fire to be ignited without obtaining a permit from respondent. Consequently, appellant violated Section 4.01 of respondent's Regulation I.

IV

Although appellant did violate the above section of respondent's Regulation I, there are mitigating circumstances. Appellant reasonably relied upon the information contained in newspaper articles and radio broadcasts concerning the limited lifting of the ban on open burning. Apparently appellant has never before violated any of respondent's open burning regulations. Furthermore, the fire was immediately extinguished by appellant as soon as respondent's representative notified appellant of the violation. Consequently, the \$50 penalty should be suspended on the condition that appellant not violate respondent's open burning regulations for a period of one

1 year after this Order becomes final.

2 V

3 Any Finding of Fact which should be deemed a Conclusion of Law
4 is hereby adopted as such.

5 Therefore, the Pollution Control Hearings Board issues this
6 ORDER

7 The \$50 civil penalty appealed is affirmed, and suspended on
8 the condition that appellant not violate respondent's open burning
9 regulations for a period of one year after this Order becomes final.

10 DATED this 27th day of August, 1979.

11 POLLUTION CONTROL HEARINGS BOARD

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14 NANCY E. CURINGTON
15 Administrator

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25 PROPOSED FINDINGS OF FACT,
26 CONCLUSIONS OF LAW
27 AND ORDER